AUG 5 2026 PM12:49

**RULE NO. R161-26.22**

**NOTICE OF PROPOSED RULE** **POSTING DATE: August 5, 2026**

The Director of Austin Watershed Protection proposes to adopt the following rule on or after September 7, 2026.

**EFFECTIVE DATE OF PROPOSED RULE**

A rule proposed in this notice may not become effective before the effective date established by a separate notice of rule adoption. A notice of rule adoption may not be posted before September 7, 2026, or after October 14, 2026 (the 70th day after the date of this notice).

If a proposed rule is not adopted on or before the 70th day, it is automatically withdrawn and cannot be adopted without first posting a new notice of proposed rule.

**REQUEST FOR COMMENTS ON PROPOSED RULES**

The City requests comments from the public with respect to the proposed rules included in this Notice. Comments must be submitted in writing to the contact person below no later than September 6, 2026. A summary of the written comments received will be included in the notice of rule adoption that must be posted for the rule to become effective.

**Contact Person:**

Nicole Corona, Program Coordinator
Austin Watershed Protection
nicole.corona@austintexas.gov
737-291-3084

**TEXT OF PROPOSED RULE**

The text of the proposed rule indicating changes from the current text is attached to this notice.

**BRIEF EXPLANATION OF PROPOSED RULE**

Rule R161-26.22 proposes revisions to Environmental Criteria Manual Section 1.6.4 (*Structural Control Standard and Criteria for Optional Payment Instead of Structural Controls*) and adopts new Appendix T-2 (*Request for Payment In Lieu of Structural Water Quality Controls for Residential Projects in the Urban Watersheds*).

An affordability impact statement regarding the proposed rule is available by contacting Nicole Corona, nicole.corona@austintexas.gov or 737-291-3084.

## AUTHORITY FOR ADOPTION OF PROPOSED RULE

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in City Code Chapter 1-2 (*Adoption of Rules*). The authority to regulate design and construction of drainage facilities and improvements is established in City Code Section 25-7-64 (*Design and Construction of Drainage Facilities and Improvements*).

## CERTIFICATION BY CITY ATTORNEY

By signing this Notice of Proposed Rule R161-26.22, the City Attorney certifies the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

**REVIEWED AND APPROVED:**

Jorge L. Morales, P.E., CFM, Director
Austin Watershed Protection

Date: _____

Deborah Thomas, City Attorney

Date: 8/4/2026

### 1.6.4 Structural Control Standard and Criteria for Optional Payment Instead of Structural Controls

A. **Introduction.** ~~Sedimentation/filtration~~ Green stormwater infrastructure is the primary structural water quality control to reduce non-point source pollution in Urban, Suburban, Water Supply Suburban and Water Supply Rural Watersheds. In the Barton Springs Zone, non-degradation water quality controls are required (Please refer to Section 1.6.9 for design criteria for non-degradation controls). Innovative controls may be acceptable pursuant to Section 25-8-151 of the Land Development Code (Innovative Management Practices). However, these systems must be approved by the Director of ~~the~~ Austin Watershed Protection ~~and Development Review Department (WPDR)~~. The guidelines for several alternative controls are described in Section 1.6.7.

B. ~~Criteria for~~ **Acceptance of** ~~Fee~~ **a Payment Instead of Structural Controls.** The City recognizes that incorporating structural water quality control facilities into some ~~urban watershed~~ Urban Watershed land development projects can be difficult. In response to these challenges, Section 25-8-214(C) of the Land Development Code requires the Director to review and accept or deny projects to pay into the Urban Watersheds Structural Control Fund instead of on-site controls. The funds received under this program have and will be used to study, design, implement, and construct ~~urban~~ Urban water quality improvement projects. This program is only for development within an ~~urban watershed~~ Urban Watershed as defined by Section 25-8-2 of the Land Development Code.

C. **Public Mobility Projects** For public mobility projects ~~only~~ as defined in 25-1-21(89): The optional payment instead of structural controls also applies to watersheds outside of Urban as allowed in LDC Section 25-8-214(F). These include Suburban and Water Supply Suburban and Water Supply Rural. LDC 25-8-214(F) requires the Director to review, accept, or deny projects to pay into the Suburban and Water Supply Structural Control Fund using the Appendix U request form. The funds received under this program are intended to be used to study, design, implement, and construct water quality improvement projects in watersheds outside of the Barton Springs Zone that have been impacted by public mobility projects.

D. **Urban Watersheds Optional Payment instead of Constructing Structural Controls** ~~Fund Acceptance Guidelines~~ **for up to One Acre of Impervious Cover**

a. ~~Categories for Participation.~~

~~Type I - The City will strongly consider allowing qualifying developments that are classified as Type I to participate in the fee instead of program. Type I development features include, but are not limited to one or more of the following:~~

- ~~Commercial development of 1 acre or less;~~
- ~~Single family development of subdivisions2 acres or less;~~
- ~~Development with run-off that sheet flows over pervious cover, prior to being concentrated; and~~
- ~~Development that is likely to be treated by an existing or future regional water quality facility.~~

~~Type II - The following Type II developments will in most cases be required to satisfy the water quality requirements through the use of on-site water quality controls. Type II development features include, but are not limited to one or more of the following:~~

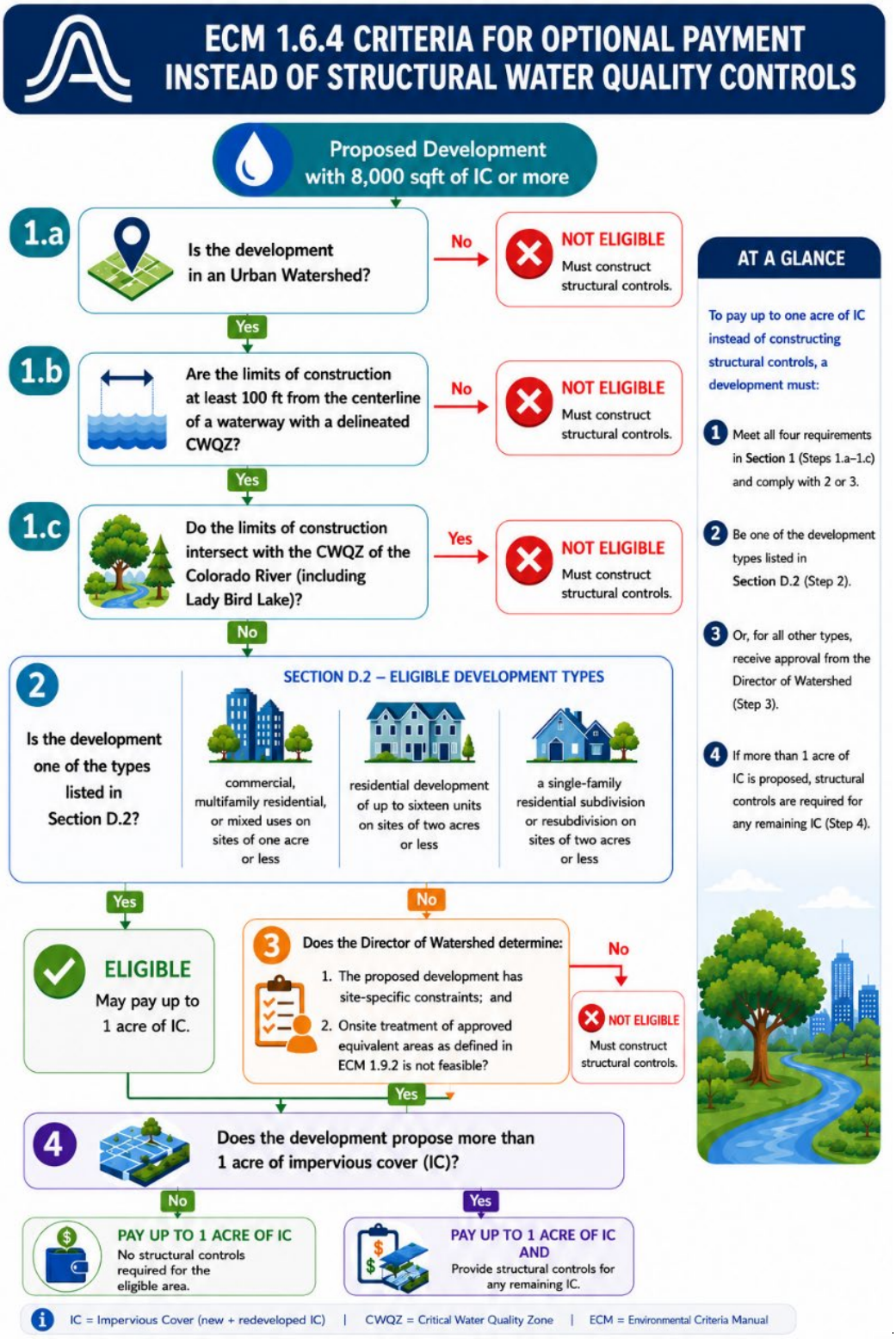
- ~~No or minimal existing impervious cover;~~
- ~~Substantial redevelopment;~~
- ~~Adjacent to an open channel stream; and~~
- ~~Within 500 feet of Town Lake.~~

~~b. Special Conditions. In addition to the specific criteria given above, the applicant should note the following conditions which could arise:~~

- ~~Should a regional facility be committed to its maximum capacity, an applicant may (at the City's discretion) increase the capacity through approved modifications. The funding of any such modifications will be the responsibility of the applicant, and shall be credited towards any fees that are required.~~

- ~~Existing on-site water quality facilities may be removed if the development is approved to participate in the fee instead of program and the WPD approves such removal.~~

1. A development can pay for up to one acre of impervious cover instead of constructing structural controls if the development:
a. is in an Urban Watershed;
b. the limits of construction are at least 100 ft away from the centerline of a waterway with a delineated Critical Water Quality Zone (CWQZ);
c. the limits of construction do not intersect with the CWQZ of the Colorado River (including Lady Bird Lake); and
d. complies with subsection (2) or (3).
2. The following types of development can pay for up to one acre of impervious cover;
a. commercial, multifamily residential, or mixed uses on sites of one acre or less; or
b. residential site plan development of up to sixteen units on sites of two acres or less; or
c. residential subdivision or resubdivision on sites of two acres or less.
3. All other types of development can pay for up to one acre of impervious cover if the Director of Watershed determines:
a. the proposed development has site-specific constraints; and
b. there are no approved equivalent areas eligible under ECM 1.9.2 to treat onsite.
4. If a development that is eligible under Section 1.6.4.D.1 proposes more than one acre of impervious cover, the development can still pay for up to one acre of impervious cover but must provide structural controls for any remaining impervious cover.
5. This section does not apply to public mobility projects as defined in 25-1-21(89).




~~c.~~E. **Participation Payment.** Participation payments are calculated by the applicant at the time of project submittal. ~~The~~ ~~p~~Payment schedules can be accessed through the following link: ~~posted within the Land~~

~~Use Review Division. Any increase will be posted at least 30 days prior to enactment. The present payments for participation are listed in Appendix T~~

- Appendix T: Request for Payment In Lieu of Structural Water Quality Controls in the Urban Watersheds
- Appendix T-2: Request for Payment In Lieu of Structural Water Quality Controls for Residential Projects in the Urban Watersheds
- Appendix U: Request for Payment Instead of Water Quality Controls for Public Mobility Projects Outside of the Barton Springs Zone.

Appendix T, Appendix T-2 and Appendix U ~~and~~ are revised by the annual adjustment factor based on the construction cost index. Participation payments received under this program and calculated using Appendix T or Appendix T-2 will be used by the City to study, design, implement, and construct ~~urban~~ Urban water quality improvement projects. Participation payments received for Public Mobility Projects and calculated using Appendix U will be used in the regulatory watershed from which the payment was made.

After a development is accepted for participation, payments shall be paid in accordance with the following:

**Commercial Site Development**.

For commercial site development, including public mobility projects, payment (cash or cashier check only) must be made prior to issuance of a development permit.

**Single-Family and Duplex Subdivisions**.

For single-family subdivisions which do require the construction of streets or drainage facilities, a letter of credit must be posted with ~~the~~ Austin Watershed Protection ~~and Development Review~~ Department in an amount equal to the total participation payment prior to final plat approval. This letter of credit must be replaced by cash prior to construction plan approval. For single-family subdivisions which do not require the construction of streets, payment (cash or cashier check only) must be made prior to final plat approval.

In conjunction with payment, the agreement shown in Appendix T, Appendix T-2, or Appendix U shall be signed and act as a binding agreement between the applicant and the City.

*Source: Rule No. R161-23.17, 8-29-2023.*

## APPENDIX T2: Request for Payment Instead of Structural Water Quality Controls for Residential Projects in the Urban Watersheds

Items in yellow to be completed by applicant. Please refer to instructions before completing this form.

**A. OWNER/AGENT INFORMATION:**

Company: | Owner/Agent Name:

Phone Number: | Email:

**B. PROJECT INFORMATION:**

Project name:

Location or Address:

Development Case Number:

Case Manager:

Redeveloped Impervious Cover (ac.):

New Impervious Cover (ac.):

Total Impervious Cover: 0.00

**C. PAYMENT CALCULATIONS:**

| 1. SITE IMPERVIOUS COVER COMPONENT (SICC) | Rate x | Acreage (ac.) = | Total ($) |
|---|---|---|---|
| 0 to 1.0 acre | $ 28,500.00 | | $ - |
| Construction Cost Adjustment Factor (ENR CCI AF) | | | |
| **PAYMENT AMOUNT (SICC TOTAL)** | | **SICC TOTAL X ENR CCI AF =** | **$ -** |

**E. AUTHORIZATION:**

Owner/Agent: | DATE:

Owner/Agent Signature

Reviewed By: | DATE:

Signature of the Director of Austin Development Services